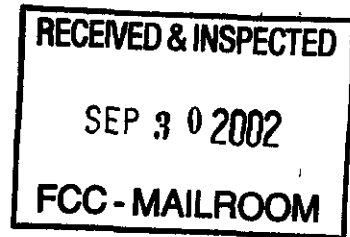


Before the  
Federal Communications Commission  
Washington, D.C. 20554



In the Matter of	)	
	)	
Request for Review of a Decision of the	)	
Universal Service Administrative Company	)	
By	)	
	)	
Wayne County Regional Educational Service	)	File No. SLD-266683
Agency	)	
Wayne, Michigan	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.	)	

**ORDER**

**Adopted: September 19, 2002**

**Released: September 20, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has before it a Request for Review filed by Wayne County Regional Educational Service Agency (Wayne), seeking review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company.<sup>1</sup> SLD returned without consideration Wayne's Funding Year 2001 application for discounted services under the schools and libraries universal service support mechanism because Wayne omitted Block 4 of its application, which is required under SLD's minimum processing standards.<sup>2</sup> For the reasons set forth below, we deny the Request for Review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for

<sup>1</sup> Letter from Bruce Barrett, Wayne County Regional Educational Service Agency, to Federal Communications Commission, filed August 6, 2001 (Request for Review).

<sup>2</sup> See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c). Previously, this funding period was referred to as Funding Year 4. Funding years are now described by the year in which the funding period starts. Thus the funding period which begins on July 1, 2001 and ends on June 30, 2002, previously referred to as Funding Year 4, is now called Funding Year 2001. The funding period which begins on July 1, 2002 and ends on June 30, 2003 is now known as Funding Year 2002, and so on.

discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470,<sup>4</sup> which is posted to the Administrator's website for all potential competing service providers to review.<sup>5</sup> After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.<sup>6</sup> SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. Under the Commission's regulations, SLD is authorized to establish and implement filing periods and program standards for FCC Form 471 applications by schools and libraries seeking to receive discounts for eligible services.<sup>7</sup> Pursuant to this authority, every funding year, SLD establishes and notifies applicants of a "minimum processing standard" to facilitate the efficient review of the thousands of applications requesting funding.<sup>8</sup> In Funding Year 2001, SLD instructions stated that minimum processing standards required applicants to submit all 6 Blocks of the FCC Form 471 for consideration, including Block 4.<sup>9</sup> In Block 4, an entity is listed together with its associated discount rate.<sup>10</sup> Groups of entities that will be receiving shared services are listed with their average rate.<sup>11</sup> Minimum processing standards also

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>4</sup> Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

<sup>5</sup> 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

<sup>6</sup> 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

<sup>7</sup> See 47 C.F.R. § 54.507(c); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, *Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998).

<sup>8</sup> See, e.g., SLD website, Form 471 Minimum Processing Standards and Filing Requirements for FY4, <<http://www.sl.universalservice.org/reference/471mps.asp>> (Funding Year 2001 Minimum Processing Standards).

<sup>9</sup> *Id.*

<sup>10</sup> See FCC Form 471, Block 4.

<sup>11</sup> The Block 4 worksheet generally requires the applicant to list all the entities receiving a service for which discounts are sought. See FCC Form 471, Block 4. In those situations where an applicant is seeking discounts for a service to be shared by a group of schools within the district, the worksheet calculates the weighted average discount of those schools which is then applied to the shared service. *Id.* Where a school district is seeking multiple shared services for different groups of schools within its district, the applicant must complete a different Block 4 worksheet for each group, labeling the worksheets "A-1", "A-2", and so forth. In this situation, separate Block 4 worksheets are required because the weighted average discount will vary from group to group. *Id.* The FCC Form 471 requests that the applicant identify the Block 4 worksheet for a particular group at Item 22 of the Block 5 worksheet used to request the discounted services to be received by that group. *Id.*

required applicants to use the correct form.<sup>12</sup> When an applicant submits an application that does not comply with an item subject to the minimum processing standard, SLD automatically rejects the application and returns it to the applicant.<sup>13</sup>

4. Wayne filed a FCC Form 471 with SLD for Funding Year 2001 on January 22, 2001.<sup>14</sup> Wayne did not submit Block 4 of the FCC Form 471, but instead attached a worksheet to its FCC Form 471 describing the entities that would be receiving the requested services, along with the associated discount rate.<sup>15</sup> On March 23, 2001, Wayne received a letter from SLD notifying the school that its application could not be processed because the application was incomplete.<sup>16</sup> SLD explained that Wayne did not complete all 6 blocks of the application.<sup>17</sup>

5. On April 16, 2001, Wayne filed an appeal with SLD, asserting that Block 4 was properly completed with an attached worksheet, showing the discount calculation.<sup>18</sup> Further, Wayne stated that the appeal should be granted based on the Commission's *Naperville* decision.<sup>19</sup> In *Naperville*, the Commission determined that, under the totality of the circumstances, SLD should not have returned an application without consideration for failure to meet SLD's minimum processing standards.<sup>20</sup> In *Naperville's* case, the Commission specifically found that "(1) the request for information was a first-time information requirement on a revised form, thereby possibly leading to confusion on the part of the applicants; (2) the omitted information could be easily discerned by SLD through examination of other information included in the application; and (3) the application is otherwise substantially complete."<sup>21</sup>

6. On July 13, 2001, SLD denied Wayne's appeal because the application failed to meet minimum processing standards.<sup>22</sup> SLD also determined that Wayne's appeal failed to satisfy the requirements outlined in *Naperville* because the submittal of Block 4 was not a new requirement for Funding Year 4, and the application could not be considered substantially complete if it did not contain all 6 Blocks.<sup>23</sup> Wayne then filed the instant Request for Review,

<sup>12</sup> Funding Year 2001 Minimum Processing Standards.

<sup>13</sup> *Id.*

<sup>14</sup> FCC Form 471, Wayne County Regional Educational Service Agency, filed January 22, 2001 (Wayne Form 471).

<sup>15</sup> *Id.*

<sup>16</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Steve Czak, Wayne County Regional Educational Service Agency, dated March 23, 2001 (Funding Year 2001 Form 471-Rejection Letter).

<sup>17</sup> *Id.*

<sup>18</sup> Letter from Bruce Barrett, Wayne County Regional Educational Service Agency, to Schools and Libraries Division, Universal Service Administrative Company, filed April 16, 2001 (SLD Appeal Letter).

<sup>19</sup> *Id.*

<sup>20</sup> *Request for Review by Naperville Community Unit School District 203, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-203343, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 5032, 5037 (2001) (*Naperville*).

<sup>21</sup> *Naperville*, 16 FCC Rcd at 5039.

<sup>22</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bruce Barrett, Wayne County Regional Educational Service Agency, dated July 13, 2001.

<sup>23</sup> *Id.*

again requesting that its FCC Form 471 be considered for Funding Year 2001.<sup>24</sup> Wayne asserts that in prior funding years, SLD accepted worksheet attachments as a substitution for Block 4 of the FCC Form 471.<sup>25</sup>

7. We find that Wayne did not satisfy minimum processing standards because Wayne did not utilize the correct OMB-approved form for Block 4 of its application. The Wireline Competition Bureau has previously upheld SLD's minimum processing standard of requiring the applicants to use the correct form.<sup>26</sup> Specifically, the minimum processing standards for a FCC Form 471 for Funding Year 2001 provide that each form must be a "correct OMB-approved FCC Form 471, with a date of October 2000 in the lower right-hand corner."<sup>27</sup> Accordingly, Wayne was required to utilize the correct OMB-approved FCC Form 471 when submitting its application.

8. SLD's instructions do not prevent applicants from submitting visually equivalent attachments to *supplement* Block 4.<sup>28</sup> Accordingly, it is consistent with SLD's guidelines for applicants to indicate on Block 4 of the FCC Form 471 that corresponding information is included in an attachment to the FCC Form 471. Importantly, however, SLD requires applicants to submit Block 4 of the correct OMB-approved FCC Form 471 in order for the application to be considered complete.<sup>29</sup> Thus, applicants may use attachments in addition to Block 4, but not in lieu of Block 4. Because it was necessary to submit a complete application, it was not permissible for Wayne to use a worksheet as a substitute for Block 4 of the correct OMB-approved FCC Form 471.

9. Applicants that fail to properly complete the required application or otherwise fail to follow program rules, run the risk that their applications may not be considered within the filing window. It is administratively appropriate for SLD to require applicants to adhere to applicable program rules and application requirements.<sup>30</sup> The instructions encourage applicants to reference the SLD website, to obtain guidance material from SLD's fax-on-demand service, or to contact SLD's Client Service Bureau for assistance with the application process.<sup>31</sup> It is therefore incumbent upon applicants to determine whether their applications are in compliance

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<sup>24</sup> Request for Review.

<sup>25</sup> *Id.*

<sup>26</sup> See *Request for Review by Fair Lawn Board of Education, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.12-10-99.02300008 and NEC.471.11-19-99.01100003, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 12901 (Com. Car. Bur. 2001) (upholding SLD's minimum processing standard that required applicants to use the correct FCC Forms for the funding years in which they were applying).

<sup>27</sup> Funding Year 2001 Minimum Processing Standards.

<sup>28</sup> See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2000) (Form 471 Instructions).

<sup>29</sup> *Id.*; Funding Year 2001 Minimum Processing Standards.

<sup>30</sup> See generally Universal Service Administrative Company, Schools and Libraries Program, Reference Area: Form 471 Minimum Processing Standards and Filing Requirements, <<http://www.sl.universalservice.org/reference/471mps.asp>> (outlining the manual and online filing requirements for FCC Form 471).

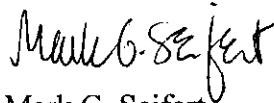
<sup>31</sup> *Id.*

with program requirements prior to filing. Therefore, we conclude that Wayne has failed to make a showing warranting relief and deny its Request for Review.

10. After further review of the record, we conclude that, under the totality of the circumstances, Wayne fails to satisfy the first prong of the *Naperville* decision.<sup>32</sup> Block 4 of the FCC Form 471 was not a first-time information request in Funding Year 2001. Indeed, Block 4 has been part of the FCC Form 471 for all previous funding years.<sup>33</sup> As a result, because the application was not a first-time request, Wayne is not entitled to relief under the *Naperville* standard.

11. Accordingly, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Wayne County Regional Educational Service Agency, Wayne, Michigan, on August 6, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert  
Deputy Chief  
Telecommunications Access Policy Division

<sup>32</sup> *Naperville*, 16 FCC Rcd at 5039.

<sup>33</sup> See, e.g., Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FY 2000 FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1998) (FY 1999 FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FY 1998 FCC Form 471).